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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,535	03/30/2001	Erik S. Ruf	MS	1094
7590	11/07/2005		160347.2/40062.120US01	
Homer L. Knearl Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			EXAMINER RUTTEN, JAMES D	
			ART UNIT	PAPER NUMBER
			2192	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/822,535	Applicant(s) RUF, ERIK S.	
	Examiner J. Derek Rutten	Art Unit 2192	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-23.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Continuation of 7:

Amendments to claims 22 and 23 have reasonably overcome the prior 112 rejection. Those amendments do not fundamentally change the 103 rejection of those claims and they would be rejected according to the reasons set forth in the Final Action mailed on 7/26/05.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant essentially argues as stated in the last paragraph on page 10 of the reply that the Bacon reference "simply does not teach generating the optimized instruction before invoking the target function." However, Bacon teaches the generation of an optimized instruction at compile time, during the optimization phase (Bacon section 6.8.9 on pages 391-392). Any invocation of the target method necessarily happens at runtime. Since compilation occurs before execution (runtime), generation of the optimized instruction must occur before invocation of the function, regardless of when the cache itself is generated. Further, the plain language of the claim simply calls for "generating, before invoking a target method, an optimized instruction..." Applicant further argues (page 10 paragraph 2) that "there is no need to call or execute the function". However, this raises an issue with at least claim 1 that recites: "the call site further being programmed to call a target method". This appears to contradict with Applicant's remarks indicating that the invention "obviates the need for a function call". Clarification is needed.

Applicant argues that "McNamee does not teach generating the return constant table before invoking the target function" (page 11 paragraph 2). However, McNamee was not relied upon for this feature.

Applicant further argues that "Hall simply does not teach generating the return constant table before invoking the target function" (page 11 paragraph 3). Hall teaches the precomputation of the table (Hall page 4 section 3.3 lines 14-18). Since Bacon's optimizing compiler would not be in the same application space as the function, there would be no need to "invoke" the target method. The optimizing compiler would simply make the necessary precomputations as taught by Hall, and build the table. Hall teaches a static optimization that could be implemented by Bacon. Thus, Applicant's argument is not convincing.

Applicant essentially argues that the invention "does not require any such execution of the function or method...", in contrast to any prior art describing memoization, which requires execution in order to generate return values of functions. However, the plain language of the claims simply requires "before invoking..." and "without requiring a function call". The claims do not require that a table is generated without execution of the contents of the function. Function contents can be executed without calling or invoking the function, as described by Bacon in section 6.6 on page 379.



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